



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

December 11, 2008

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Rees at 6:30 p.m. at City Hall, 300 West Plant Street, Winter Garden, Florida. The invocation and Pledge of Allegiance were given.

Present: Mayor John Rees, Commissioners Harold L. Boulter, Bob Buchanan, H. Gerald Jowers and Colin Sharman

Also Present: City Manager Mike Bollhoefer, City Attorney A. Kurt Ardaman, City Clerk Kathy Golden, Public Services Director Don Cochran, Planning Director Ed Williams, City Planner Tim Wilson, Human Resources Director Frank Gilbert, Fire Chief John Williamson, Police Chief George Brennan, Finance Director Robin Hayes, Building Official Skip Lukert, Recreation Director Jay Conn, Economic Development Director Dolores Key, Director of Information Technology Bob Reilly, Assistant City Engineer Mike Kelley, Capitol Projects Manager Marc Black, Community Relations Manager Andrea Vaughn, and West Orange Times Reporter Michael Laval

1. **APPROVAL OF MINUTES**

Motion by Commissioner Jowers to approve the regular meeting minutes of November 13, 2008 as submitted. Seconded by Commissioner Boulter and carried unanimously 5-0.

2. **PRESENTATION**

A. **Overview of the City's Reclaimed Water System Master Plan**

Public Services Director Cochran stated that staff has been working with Professional Engineering Consultant (PEC) on the reclaimed water system master plan. He explained that there are multiple purposes for the study; it is a requirement of the City's consumptive use permit through the St. Johns River Water Management District and it is required by the Florida Department of Environmental Protection (FDEP). Mr. Cochran gave a PowerPoint presentation (*see attached Exhibit A*) explaining the master plan. In addition, Mr. Cochran expressed that this is a project to be implemented over the next 22 years.

Mayor Rees asked if the \$57 million projected includes inflation. Mr. Cochran replied that some inflation was taken into account.

B. **Recognition Awards**

City Manager Bollhoefer announced the following awards as presented by Mayor Rees:

Orange County Design Excellence Award for the new City Hall was accepted by Project Manager Marc Black

City County Communications and Marketing Association (3CMA) for the WinterGardenFLProspector.com; International Economic Development Council Special Purpose Website in Economic Development; and the Savvy Award from 3CMA for the quarterly newsletter were accepted by Economic Development Director Dolores Key.

3. **FIRST READING OF PROPOSED ORDINANCE**

- A. **Ordinance 09-01:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 38-91, 38-93 and 38-98 THROUGH 38-100 IN DIVISION 3, ARTICLE II, CHAPTER 38 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN DEFINING AND REGULATING LOT CLEANING; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-01 by title only. City Planner Wilson stated that this Code revision clarifies the City's procedures. It also provides for the City's ability to recover its costs through a special assessment lien.

Motion by Commissioner Boulter to approve Ordinance 09-01 with the second reading and public hearing being scheduled for January 8, 2009. Seconded by Commissioner Sharman and carried unanimously 5-0.

4. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE**

- A. **Ordinance 08-56:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, ANNEXING THE KENNY COURT SUBDIVISION AND ADJACENT PROPERTIES LOCATED APPROXIMATELY 175 FEET WEST OF BETHUNE AVENUE, NORTH OF MAPLE STREET AND SOUTH OF THE RAILROAD RIGHT OF WAY, PENDING A REFERENDUM VOTE OF THE REGISTERED ELECTORS OF SAID AREA; DIRECTING A REFERENDUM ON SAID PROPOSED ANNEXATION PURSUANT TO SECTION 171.0413, FLORIDA STATUTES; ESTABLISHING THE DATE OF SAID REFERENDUM; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 08-56 by title only. City Planner Williams stated that this is a proposed annexation of 41 single family residences on approximately 10 acres of land. The referendum will be held on January 27, 2009 and there will be another community meeting the week prior to answer any questions.

Commissioner Boulter asked how Kenny Court residents will be notified. Mr. Williams responded that mailers will be sent out to each home.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

Motion by Commissioner Boulter to approve Ordinance 08-56. Seconded by Commissioner Jowers and carried unanimously 5-0.

5. **REGULAR BUSINESS**

A. **Request by First American Fireworks Company for a temporary open-air vendor from December 27, 2008 to January 1, 2009 (6 days) and tent permit from December 20, 2008 to January 2, 2009 (14 days) at 13275 W. Colonial Drive (K-Mart Shopping Center)**

Building Official Lukert stated that this company has previously been at this location. They have gone through the application process and the Police and Fire departments were pleased with the setup of the tent, the open air vendor, and the sale of the fireworks according to the law, with this staff recommends approval.

Motion by Commissioner Jowers to approve a temporary open-air vendor from December 27, 2008 to January 1, 2009 (6 days) and tent permit from December 20, 2008 to January 2, 2009 (14 days) at 13275 W. Colonial Drive (K-Mart Shopping Center) for First American Fireworks Company. Seconded by Commissioner Sharman and carried unanimously 5-0.

B. **Resolution 08-15: A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, APPROVING THE ANNUAL EXTENSION OF THE THREE YEAR AGREEMENT WITH QUALITY VAULTS INC., PROVIDING FOR CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE**

Public Services Director Cochran stated that at the last meeting this item was pulled from the agenda due to receiving last minute information. Quality Vaults has requested an increase in their fees by \$50 per task. Staff contacted another vendor who bid on this project and Quality Vaults is still the lowest bidder by \$75 per task. Staff recommends extending the contract with Quality Vaults for the third year. After this year, the contract allows the City Commission to approve a year-by-year extension or direct staff to go back out for bids.

Motion by Commissioner Buchanan to approve Resolution 08-15 with the \$50 per task increase. Seconded by Commissioner Jowers and carried unanimously 5-0.

C. **Recommendation to approve Request for Qualification ranking and award continuing services contracts for Emergency Debris Management Services to Ceres Environmental Services and Phillips & Jordan, Inc.**

Public Services Director Cochran stated that immediate recovery of a major storm event is one of the City's highest priorities. In these situations, catastrophic events may require the services of emergency debris management companies. Staff recommends these two companies out of the four that responded. They appear to be the most qualified; their costs were lower than the other two; and they have the experience with the required documentation for FEMA reimbursement, which is necessary in this type of work.

Motion by Commissioner Jowers to approve the request for qualification ranking and award continuing services contracts for emergency debris management services

to Ceres Environmental Services and Phillips & Jordan, Inc. Seconded by Commissioner Sharman and carried unanimously 5-0.

D. Recommendation to approve Alternate #2 estimated at \$38,400 to improve stormwater drainage to 1181 W. Crown Point Springs Road

City Manager Bollhoefer stated that after speaking with the Mayor and some of the City Commissioners, staff would like to postpone this item. Staff will go out and get an actual bid and quotes on the different options and bring them back to the City Commission.

Mayor Rees stated that if he was to vote on this item, he would like to know what bids were actually on the table.

It was the **consensus** of the City Commission to postpone this item as recommended by the City Manager.

Mayor Rees recognized Sandra Rice, the owner of the subject property, to address the City Commission on this issue.

Ms. Rice stated that she purchased the property in 1974 and has never had any flooding before Chapin Station was established. She stated that she has literally lived in water every since. Ms. Rice distributed a letter she received from the St. Johns Water Management District and asked the City Commission for a permanent solution to saving her home.

E. Recommendation to approve an agreement for acquiring right-of-way on Plant Street and West Crown Point Road from Gil Inc. and Doug Laman

Planning Director Williams stated that Mr. Laman, individually and as the owner of Gil, Inc., owns a majority of the property on both sides along Plant Street from Hennis Road to West Crown Point. Mr. Williams recognized the City Attorney to address some minor wording changes to the agreement and stated that he believes that Mr. Laman is agreeable to the proposed changes.

City Attorney Ardaman stated that this afternoon the City received a request from Mr. Laman to change on page 8, paragraph II B, warranty deed to a special warranty deed. Mr. Ardaman stated that this creates some issues from a title standpoint and Mr. Laman has agreed to change special warranty deed back to a general warranty deed if the City would agree to change in the middle of page 7 (line 11) from a special warranty deed to a general warranty deed, to the extent that the City would convey property to him if he should exercise his option. Additionally, on page 4, paragraph 9 it addresses what happens after closing with respect to the \$40,000 payment, he recommended adding a sentence that states paragraph 9 shall survive closing. Finally, there are references made to "Douglas" that should be changed to "Laman" in the agreement.

Mr. Ardaman explained that property conveyed by a general warranty deed is conveyed with the owner making warranties of the title, which is a promise or commitment about

the property versus a special warranty deed that conveys title without any promises about the past chain of title. The City wants to have a general warranty deed.

Motion by Commissioner Jowers to approve agreement for acquiring right-of-way on Plant Street and West Crown Point Road from Gil Inc. and Doug Laman with the attorney changes as noted. Seconded by Commissioner Buchanan and carried unanimously 5-0.

F. Recommendation to approve site plan for Hope Charter School parking expansion at 1550 East Crown Point Road

Planning Director Williams stated that staff has reviewed this site plan for Hope Charter School and noted that the school has had an increase in their student enrollment over the prior years. The City requires that there be some expansion of the parking and drive isles so that the cars are not backing out onto the main road. The site plan has been reviewed by staff, subject to the conditions submitted.

Motion by Commissioner Boulter to approve the site plan for Hope Charter School parking expansion at 1550 East Crown Point Road, with conditions (*see attached Exhibit B*). Seconded by Commissioner Sharman and carried unanimously 5-0.

G. Request for reappointment by Mark Griffith to the General Employees Pension Board for an additional two-year term

City Clerk Golden stated that on behalf of the Pension Board Chairman, this reappointment is being submitted for the City Commission's consideration.

Motion by Commissioner Jowers to reappointment by Mark Griffith to the General Employees Pension Board for an additional two-year term. Seconded by Commissioner Buchanan and carried unanimously 5-0.

H. Appointment to fill the unexpired term of Rocco Williams, until March 1, 2011, on the Code Enforcement Board

Motion by Commissioner Jowers to appoint John Benoit, III to fill the unexpired term of Rocco Williams until March 1, 2011 on the Code Enforcement Board. Seconded by Commissioner Sharman and carried unanimously 5-0.

6. MATTERS FROM CITIZENS

Erin Allport, 139 Agnes Street, Winter Garden, Florida, spoke in favor of restaurants being allowed to serve alcohol outside. In light of the economic times, it is a wonderful thing to allow someone to have a beer or a glass of wine on the street. She stated that none of the restaurants participating serve hard liquor, so it will be only beer and wine. This allows businesses to increase their revenue, increase jobs to serve the patrons, and increase the foot traffic to the downtown area which will bring more businesses downtown. She stated that keeping these businesses open and busy also decreases crime. She also noted that these sales are a big part of her husband's business.

Lisa Meadows, co-owner of J.R.'s Attic, 28 W. Plant Street, Winter Garden, Florida, stated that she and her co-owner, Lori Gibson, have recently added a beautiful aluminum-cast fence since being allowed to serve wine and beer on the sidewalk within the parameters of the fence. They have had nothing but praise and compliments about what a beautiful asset it is to the street and business has increased.

Bert Valdes, owner of Moon Cricket Grill, displayed a ten year old sign from a past referendum to allow the sale of alcohol on Sunday for businesses to come to Winter Garden. He explained that because of this effort the City now has several restaurants. He explained the extensive process to get this issue on the ballot. He stated that 85 percent of the voters voted in favor of having restaurants in Winter Garden. He suggested that those in opposition go through the same process provided for in the Charter, by getting a petition and putting the issue on a ballot or they should let the issue go.

Stasha Boyd, 541 N. Boyd, Winter Garden, Florida, stated that she and her husband moved to Winter Garden ten years ago and started a successful business six years ago. They spend a lot of money in the downtown area and a part of what brought them to the community is that it was a growing community. Some of the arguments of why the ordinance should be reversed is because it is economically and socially immoral. She believes that the economic argument is ridiculous, as a small business owner, she would want other small business owners to be successful. Being able to serve a legal beverage on their private property is absolutely good business sense especially when it can bring extra jobs and extra people to the community. Ms. Boyd stated the idea that it is bad for our community to have adults consuming legal beverages in front of businesses of Winter Garden is an absurd premise that she hopes the City Commission will reject. She asked the City Commission to take into consideration that they have made the right decision; a decision that she and her neighbors and fellow business owners wholeheartedly support.

7. **MATTERS FROM CITY ATTORNEY** – There were no items.

8. **MATTERS FROM CITY MANAGER**

Site Plan Extension for Apex

City Manager Bollhoefer stated that about a year ago the City passed a revision to the Planning and Zoning ordinance which allows the City to grant an extension for site plans submitted the year prior if a developer requests it. In this economy, some developers are requesting a longer extension because they do not want to start their projects just yet, but the code does not allow this. At this point in time, there is one developer, Apex II and III, whose site plan is expiring and the City code does not currently allow the City to offer another extension. Mr. Bollhoefer stated that staff would like to make change the code but there is not enough time before the Apex site plan will expire and requested that the City Commission grant a one year extension for the Apex project. Staff will work to bring back the ordinance to the City Commission to correct this problem.

Motion by Commissioner Jowers to extend the expiration date of the site plan submittal for Apex for an additional year. Seconded by Commissioner Sharman and carried unanimously 5-0.

Repeal Emerald Utilities bid award and issue it to Allstate Paving Company

City Manager Bollhoefer stated that at the last meeting Emerald Utilities was awarded the bid for Dillard Street Stormwater Pond project and since then there have been issues with the contractor. There have been problems with change orders and the contractor not paying its subcontractors. Mr. Bollhoefer stated that Public Services Director Cochran has been trying to work out these issues and as of today they have not been resolved.

Mr. Cochran stated that Emerald Utilities sent him information today but it was not what staff originally requested. Staff met with them on Monday and a change order in the amount of \$108,644.44 was submitted. He has issue with them in that most of those charges are in dispute and staff does not believe that they are correct. He feels the City is being overcharged on many of the items. In addition, this type of significant change order should have been brought to the City's attention during construction of the project and not at the finish of the project. Mr. Cochran stated that he is uncomfortable with allowing them to move forward on the Dillard Street project and brought this to the attention of the City Manager.

Mr. Bollhoefer stated that once you start one of these projects it is difficult to stop and recommended repealing the bid award to Emerald Utilities and award it to the second lowest bidder of Allstate Paving at \$228,995.00.

Commissioner Buchanan asked if this could be done without litigation. City Attorney Ardaman replied that you will always have issues in situations like this and asked if the top four bidders had been notified. Mr. Cochran replied that the four lowest bidders were notified and Emerald Utilities was made aware of tonight's meeting to give them the opportunity to attend. Mr. Ardaman stated that there is clearly the potential for a challenge. The City has what it believes to be a basis on which to defend itself and rather than start the bid process over, and given the fact that we have strong concerns with the initial decision based on information we recently received, we have good justification for not going through with the original bid.

Mr. Cochran noted that the contracts have not been signed and due to these recent issues he did not feel comfortable with moving forward in a new contract until those issues were resolved.

Commissioner Sharman asked if awarding a contract include other criteria other than low bid amount for rating the contractor. Mr. Cochran replied no.

Motion by Commissioner Jowers to repeal the prior contract award to Emerald Utilities and award it to the next lowest bidder Allstate Paving, Inc. Seconded by Commissioner Boulter and carried unanimously 5-0.

Infrastructure Project Bids

City Manager Bollhoefer advised that with the new Presidential administration they are talking about an infrastructure plan with projects coming up very quickly. The Florida

League of Cities has requested a list of city projects that we may have that could be put out for bid within the next 120 days. Staff is a little concerned that once this starts moving forward, it may be very competitive and it may or not be necessary for the City to hire a federal lobbyist to help us out in Washington, D.C. He requested that the City Commission allow him to move forward in finding a potential lobbyist at a reasonable price if it could help us get some of the contracts. Since we may have to act fast and we don't have a meeting until January and the Commission approves his request, he will contact each Commissioner to advise them on the cost of the lobbyist.

Motion by Commissioner Buchanan to authorize the City Manager to contract with one or more federal lobbyist(s), if necessary, based upon his judgment, to assist the City in securing federal infrastructure funding when they become available. Seconded by Commissioner Jowers and carried unanimously 5-0.

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Jowers stated that in the past few years Trailer City has been shrinking and it has been brought to his attention by the homeowner's association that there are several larger lots that they would like to see filled again. He asked what would be required in order to do so. City Manager Bollhoefer stated that he believes that the City would have to go to the State and change the prospectus so it is clearly stated the City has the authority to reoccupy the lots. He suggested looking at the possibility of allowing current park residents to swap sites. Mayor Rees stated that the City would look into it and bring something back to the Commission.

Commissioner Jowers stated that he has been asked when the golf cart experiment will begin. City Manager Bollhoefer replied State law requires 62 signs along Lakeview and staff is trying to get these signs up by Monday. He will contact Trailer City residents when the route will be ready.

Commissioner Jowers wished everyone a Merry Christmas.

Commissioner Buchanan stated that he had a great time at the Christmas parade. He stated that the staff did a great job with the parade and Light-Up Winter Garden the night before. He noted all the downtown activities attract people. He wished everyone a Merry Christmas and a safe holiday.

City Manager Bollhoefer echoed Commissioner Buchanan sentiments and commended staff for their participation and hard work.

Commissioner Boulter stated that this has turned out to be a great city and there is a lot of unity within the City now. He encouraged more event participation by certain segments of the City. He wished everyone a Merry Christmas and encouraged everyone to remember the reason for the season.

Commissioner Sharman thanked the audience for taking the time to come out to tell the City whenever the Commission is doing something right.

Mayor Rees thanked the City staff for Light-Up Winter Garden and the Christmas Parade and all of their hard work. He wished everyone a very Merry Christmas and a Happy New Year.

The meeting adjourned at 7:37 p.m.

APPROVED:

/S/ _____
MAYOR JOHN REES

ATTEST:

/S/ _____
City Clerk Kathy Golden, CMC